

**UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA**

NMT Medical, Inc., and Children's Medical
Center Corporation,

Civil No. 04-4200JNE/JGL

Plaintiffs,

COMPLAINT AND JURY DEMAND

vs.

Cardia, Inc.,

Defendant.

Plaintiffs NMT Medical, Inc. (“NMT”), and Children’s Medical Center Corporation (“CMCC”), (collectively, “Plaintiffs”), file this Complaint for patent infringement against Cardia, Inc. (“Cardia”). As a result of such patent infringement, Plaintiffs have been damaged and irrevocably harmed, and seek injunctive relief, compensatory and multiple damages, attorneys’ fees, and costs and expenses.

PARTIES

1. NMT is a corporation organized and existing under the laws of the state of Delaware, and having a usual place of business in Boston, Massachusetts.

2. CMCC is a corporation organized and existing under the laws of the Commonwealth of Massachusetts, and having a usual place of business in Boston, Massachusetts.

3. On information and belief, Cardia is a corporation organized and existing under the laws of the state of Minnesota, and maintains a regular place of business in Burnsville, Minnesota.

JURISDICTION AND VENUE

4. This action arises under the patent laws of the United States, including 35 U.S.C. § 271. This Court has exclusive jurisdiction over the subject matter of this action under 28 U.S.C. § 1338(a).

5. Venue is proper in the United States District Court for the District of Minnesota pursuant to 28 U.S.C. §§ 1391 and 1400(b).

COUNT I
INFRINGEMENT OF U.S. PATENT 5,451,235

6. Plaintiffs re-allege and adopt by reference the allegations set forth in paragraphs 1-5 above.

7. On September 19, 1995 the United States Patent and Trademark Office duly and legally issued to Lock et al. United States Patent No. 5,451,235, entitled: OCCLUDER AND METHOD FOR REPAIR OF CARDIAC AND VASCULAR DEFECTS (the “‘235 patent”), a true and correct copy of which is attached hereto as Exhibit A.

8. CMCC is the assignee and owner of the ‘235 patent.

9. NMT is an exclusive licensee under the ‘235 patent.

10. On information and belief, Cardia has infringed and is infringing the ‘235 patent in the United States. On information and belief, Cardia’s acts of infringement include making, selling, and/or offering to sell closure devices, including its PFO Closure Devices, that fall within the scope of one or more claims of the ‘235 patent.

11. On information and belief, Cardia is making, selling, and/or offering for sale the infringing closure devices in this judicial district.

12. Cardia has notice of the '235 patent.
13. Cardia's infringement of the '235 patent has been willful.
14. Plaintiffs are without an adequate remedy at law because Cardia's infringement has irreparably harmed Plaintiffs and will continue to do so unless Cardia is enjoined by the Court from the actions complained of herein.

PRAYERS FOR RELIEF

WHEREFORE, Plaintiffs pray for a judgment in their favor, including:

1. A finding that Cardia has infringed and continues to infringe the '235 patent;
2. A finding that Cardia's infringement of the '235 patent has been willful;
3. A preliminary and permanent injunction prohibiting Cardia, its officers, agents, servants, employees, attorneys, and all other persons in active concert or participation with it, from further infringing the '235 patent throughout the patent's remaining enforceable term;
4. An award of Plaintiffs' damages proximately caused by Cardia's unlawful acts;
5. An award of increased damages and punitive damages for the willful nature of Cardia's unlawful acts, said award to equal at least three times the amount of Plaintiffs' actual damages;
6. An award of the costs and attorneys' fees Plaintiffs have incurred in bringing and maintaining this action;
7. An award of pre-judgment and post-judgment interest; and
8. Such other and further relief as the Court deems proper.

Jury Trial Requested

Plaintiffs request a trial by jury on all issues so triable.

Dated: September 22, 2004

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